

Congress of the United States
House of Representatives
Washington, D.C. 20515

August 26, 2019

Adele Gagliardi
Administrator, Office of Policy Development and Research
U.S. Department of Labor
200 Constitution Avenue
Washington, DC 20210

Re: Proposed Rule: Apprenticeship Programs, Labor Standards for Registration, Amendment of Regulations, RIN 1205-AB85

Dear Ms. Gagliardi:

We write to express our concerns with the proposed changes to the regulations of the National Apprenticeship Act (“the Act”) and to request a 60-day extension of the public comment period for the Notice of Proposed Rulemaking (NPRM) for the “Apprenticeship Programs, Labor Standards for Registration, Amendment of Regulations” rule (RIN 1205-AB85). The NPRM as currently constructed fails to comply with either Executive Order 13801, Expanding Apprenticeships in Americaⁱ (“the EO”) or with the National Apprenticeship Act, and substantial changes must be made to the proposed rule to conform to these legal authorities.

First, the NPRM, as currently constructed, is in violation of the enabling Act. This NPRM chooses to rely on a single requirement of the Act, “to bring together employers and labor for the formulation of programs of apprenticeship” while ignoring the additional requirements authorizing and directing the Secretary “to formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices, to extend the application of such standards by encouraging the inclusion thereof in contracts of apprenticeship . . . [and] to cooperate with State agencies engaged in the formulation and promotion of standards of apprenticeship.”ⁱⁱⁱ All of the five requirements in the Act are directive, and are joined together with the conjunctive “and” not “or”. Basic rules of statutory construction mean this language therefore requires the Secretary, in developing an apprenticeship program, to adhere to and implement each of the five requirements of the Act, not just those selected by the NPRM.

Second, the Task Force on Apprenticeship Expansion that was convened pursuant to the E.O., and the subsequent Task Force report to the President was clear that “The Industry-Recognized Apprenticeship program should begin implementation with a pilot project in an industry without well-established Registered Apprenticeship programs.”ⁱⁱⁱ Although the Department of Labor (“the Department”) uses the E.O. to justify changes to the Act’s regulations, the NPRM rejects the pilot project recommendation citing a “large skills gap,” but fails to provide sufficient

evidence of this gap, how the establishment of the Industry-Recognized Apprenticeship Program (IRAP) will address this “large skills gap,” or that IRAPs will have better results than Registered Apprenticeships (RAs).^{iv} Further, the NPRM states that this proposal should “not come at the cost of existing registered apprenticeship programs,” making it all the more troubling that the NPRM has been developed by diverting federal resources away from RAs while stating that this proposal should not negatively impact these programs.

This NPRM undermines key standards and protections that are necessary to safeguard the welfare of apprentices. These standards (e.g. wage progression, safety requirements and the promise of a nationally-portable credential) are in place for the RA system and are set forth in apprenticeship contracts or apprenticeship agreements. By proposing the establishment of “Standard Recognition Entities” (SREs), third parties that will be granted the authority to establish apprenticeship standards and ensure accountability structures, the Department is abandoning its statutory role in safeguarding the welfare of apprentices. Moreover, there is no statutory authority for the Department to grant third parties the authority to serve as SREs or to collect fees for serving in this role.

Further, this NPRM ignores the statutory requirement in the National Apprenticeship Act for cooperation with State agencies, as State Apprenticeship Agencies have no clear role or authority over SREs and IRAPs operating in their State. Thus, those States with their own apprenticeship agencies will be confronted with a second apprenticeship program funded by the Department with potentially weaker standards and protections.

In sum, this proposed regulation undermines the existing RA system, including the investments States, employers and unions have made across the country, by enabling programs to be created with potentially lower quality standards under the name of “apprenticeship.” While the Secretary does have the authority under the Act to bring together employers and labor for the formulation of programs of apprenticeship, this proposed action seems unnecessary as RAs have experienced increased interest and investments over recent years. This is demonstrated by the fact that the number of active apprentices is currently 137 percent higher than the 20-year annual average.^v

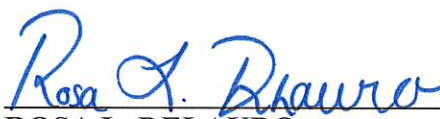
The Secretary is urged to comply with the letter of the law. If the Secretary does move forward with plans to create a new apprenticeship program, we strongly encourage the Secretary to exclude from those plans any occupation already deemed an apprenticeable occupation by the Department, including the construction trades which have a long and highly-regarded history with RAs, as well as industries like public administration, manufacturing, health care and social assistance, and retail, as they are in the top industries with active apprentices according to the Department.^{vi} However, we caution that introducing any new and potentially lower-quality programs under the same name of “apprenticeship” will only cause greater confusion to the apprentices and employers participating or interested in participating in the RA system.

The current comment period is slated to end August 26, 2019 and the proposed extension date is October 25, 2019. Given the substantive changes to the existing regulations proposed in this NPRM, a 60-day public comment period will not allow Members of Congress the time to adequately understand the ramifications of these proposed changes, engage with impacted stakeholders, and appropriately comment. We appreciate your consideration of our request to extend the deadline for the comment period to October 25, 2019 to give us additional time to discuss these potential changes with our constituents.

Sincerely,



ROBERT C. "BOBBY" SCOTT
Chairman
Committee on Education and Labor



ROSA L. DELAURO
Chair
Subcommittee on Labor, Health and Human
Services, Education, and Related Agencies
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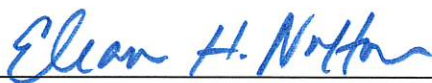
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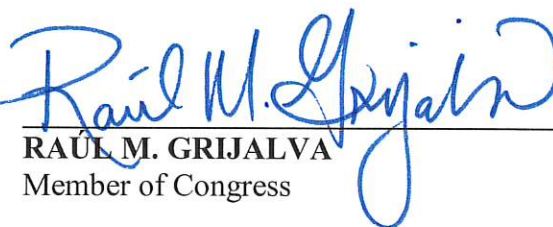
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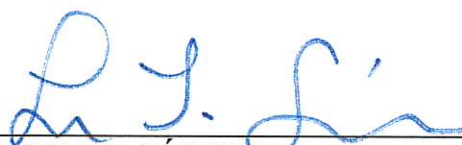
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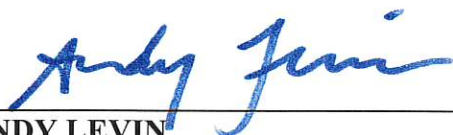
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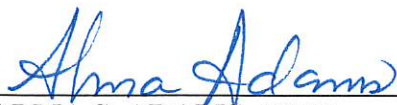
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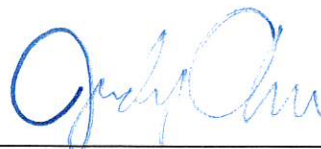
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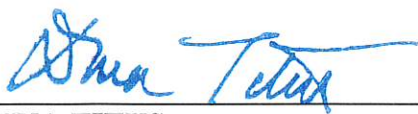
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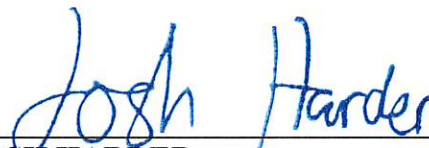
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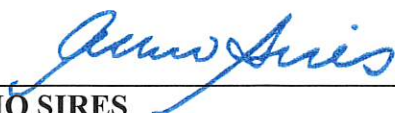
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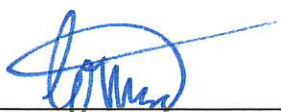
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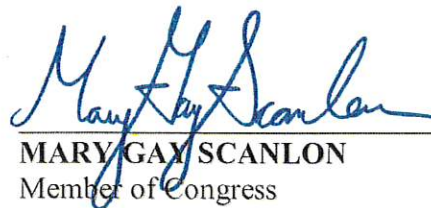
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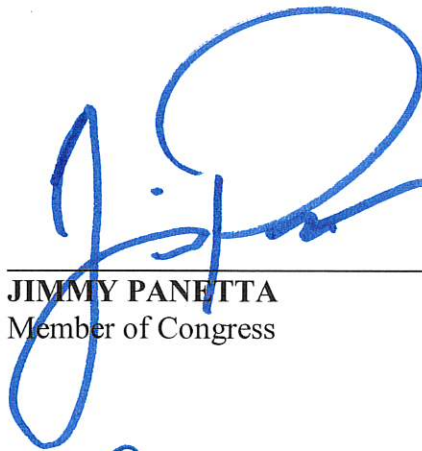
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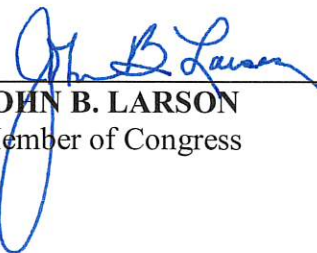
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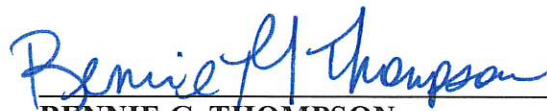
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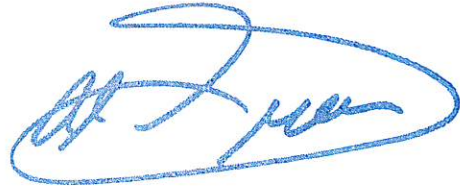
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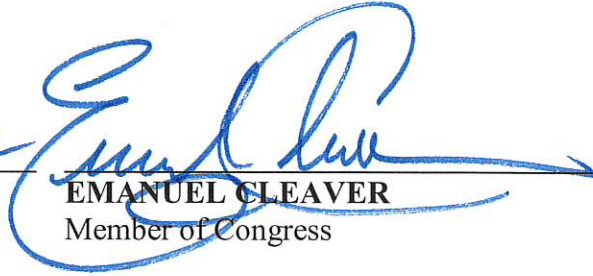
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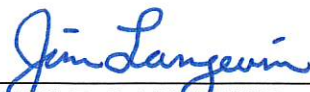
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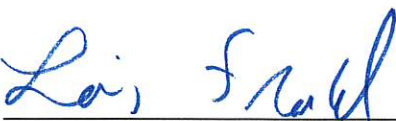
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ⁱ Executive Order 13801, Expanding Apprenticeships in America, 82 FR 28229. June 15, 2017, Available at: <https://www.federalregister.gov/documents/2017/06/20/2017-13012/expanding-apprenticeships-in-america>.

ⁱⁱ National Apprenticeship Act, 29 U.S.C. §50 (emphasis added).

ⁱⁱⁱ Task Force on Apprenticeship Expansion, *Final Report to: The President of the United States. "Recommendation 14: Pilot Project."* (p. 34-35). Available at <https://www.dol.gov/apprenticeship/docs/task-force-apprenticeship-expansion-report.pdf>.

^{iv} Department of Labor Employment and Training Administration Notice of Proposed Rulemaking Apprenticeship Programs, Labor Standards for Registration, Amendment of Regulations RIN 1205-AB85. June 25, 2019. Available at: <https://www.federalregister.gov/documents/2019/06/25/2019-13076/apprenticeship-programs-labor-standards-for-registration-amendment-of-regulations>.

^v Number based on the Employment and Training Administration's calculations for 2017, Available at: https://doleta.gov/oa/data_statistics2017.cfm.

^{vi} U.S. Department of Labor Registered Apprenticeship National Results Fiscal Year (FY) 2018. Available at: https://www.doleta.gov/oa/data_statistics.cfm.